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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re AARON F., a Person Coming Under
the Juvenile Court Law.

B240132
(Los Angeles County
Super. Ct. No. CK81517)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MANUEL O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

Manuel O. appeals a dependency court order denying his Welfare and Institutions Code section 388 petition.¹ Manuel only expressed a commitment to his alleged son when the child was already six years old and had been living with his maternal grandparents, his prospective adoptive parents, for well over a year. We find that the trial court properly determined that granting the relief sought in the section 388 petition would not be in the child's best interest. Accordingly, we affirm.

FACTS

Aaron F. was born in March 2005. He and his two siblings came to the attention of the Department of Children and Family Services (DCFS) in March 2010 based on a referral that they had suffered general neglect and emotional abuse. It was reported that Mother, Tara F., had wild parties in her residence, with men coming and going all night. It was alleged that Mother worked as a stripper and possibly a prostitute in her home and was a heavy user of drugs. Neighbors observed the children playing by themselves outside late at night. In March 2010, an ambulance came to the home to attend to a man and a woman who both overdosed on drugs. The children were present in the home when both overdoses occurred.

All three children stated they felt safe and comfortable being placed with their maternal grandmother. The children had previously stayed at their maternal grandmother's residence at least one night a week, where they had bedrooms and belongings.

On March 16, 2010, a detention hearing was held. The court found that the father of Aaron F. was unknown. The children were ordered detained with their maternal grandparents, and DCFS was ordered to provide family reunification services.

Between March and June 2011, Mother failed to drug test on four occasions. Further, she failed to complete court-ordered drug counseling, random drug testing, parenting, and individual counseling. At the 18-month review hearing in September

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

2001, Mother was found to be not in compliance with her case plan, and family reunification services were terminated. Meanwhile, the children remained placed with their maternal grandparents.

On October 21, 2011, Manuel O. called the DCFS social worker and identified himself as Aaron's father. Manuel stated that he had just found out that Aaron was removed from Mother's custody. The social worker gave Manuel the contact information for Aaron's attorney. The caseworker thereafter contacted Aaron, who stated that he did not recall having any sort of relationship with Manuel. In addition, the maternal grandmother stated that Manuel had always denied being Aaron's father and, even though he knew the grandmother's address, he had never made any attempt to contact Aaron.

Approximately 10 days later, Manuel, with his wife and their son, made an unannounced visit to the maternal grandparents' home. The maternal grandmother allowed Aaron to interact with Manuel and his family, but she cut the visit short when Manuel's wife told Aaron that her son was Aaron's brother. In a letter written soon after the incident by Aaron's therapist, the therapist stated that Aaron reported strong feelings of discomfort and confusion by Manuel's sudden attempts to interact with him. The therapist had deep concerns about the negative impact that such interactions could have on Aaron's mental well-being and stability.

On November 7, 2011, Manuel filed a section 388 petition, requesting a paternity test and (if the paternity test showed he was Aaron's father) full legal and physical custody. The petition was denied on November 29, 2011. The dependency court found that the petition did not show a change of circumstances or that the proposed change of order would promote the best interest of the child. In addition, the denial noted that Manuel would not be entitled to placement or custody simply by being the biological father, and that Aaron did not know Manuel and the recent visit caused Aaron discomfort and confusion. The court further found that Manuel is the alleged father of Aaron.

The January 9, 2012 section 366.26 report noted that Aaron continued to live with his maternal grandparents (the prospective adoptive parents) along with his siblings.

Aaron was in good health, exhibited age appropriate development, and was functioning at grade level. He continued to participate in individual therapy. DCFS stated that Aaron and his siblings were likely to be adopted by their maternal grandparents, with whom they had been continuously living since March 2010. The grandparents wanted to adopt the children so as to keep them in the family and provide them with a safe, stable, and permanent home. They were described as being financially and emotionally able to provide for the children's needs. The children likewise wished to be adopted by their grandparents.

On March 12, 2012, Manuel filed a second section 388 petition. He sought presumed father status and for Aaron to be placed in his home. In the petition, Manuel stated that he had attended Aaron's last two birthday parties and spent Halloween with him in 2011, but had been unable to see Aaron at times because Mother moved frequently and Manuel did not know her whereabouts. Attached to the petition were letters from Manuel's wife, relatives, and friends, some stating that Manuel had a relationship with Aaron and others stating that Manuel had a good moral character.

The dependency court denied Manuel's second section 388 petition on March 12, 2012. The court found that Aaron's best interest would not be promoted by the change of order. Manuel filed a timely appeal.

DISCUSSION

Under section 388, the dependency court has discretion to modify a previously made order if circumstances have changed such that it would be in the child's best interests to modify the order. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526-527 & fn. 5.) This is a two-part requirement. It is not enough to show merely a change in circumstances; the petition must also show that modification of the order would be in the best interests of the child. (*Id.* at p. 529.) The party seeking the modification bears the burden of making both showings. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

"If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held and shall give prior notice" (§ 388, subd. (d).) "Section 388 thus gives the court two choices: (1) summarily

deny the petition or (2) hold a hearing.” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.) To compel a hearing, the petitioner must make a “prima facie” showing of “facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

Modification of a previously made order is within the dependency court’s discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) The appellate court will not disturb the dependency court’s determination “unless an abuse of discretion is clearly established.” (*Ibid.*) “[‘]“The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”’” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

We find that the dependency court did not abuse its discretion by determining that Manuel failed to make a prima facie showing that modification would be in Aaron’s best interest, and on that basis denying Manuel’s section 388 petition. The court’s determination was supported by abundant evidence. Aaron, who was seven years old at the time Manuel’s second section 388 petition was heard, had been living with his maternal grandparents continuously for two years, and had visited and stayed with them on many occasions before that.

It was clear that Aaron had a very close bond with his grandparents. Although the strength of the relative bonds between child and his parent and the child and his caretaker is not the sole factor a court weighs when determining the child’s best interest, it is a very important one. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531.) Here, the strength of relative bonds weighed very heavily in favor of the grandparents. Aaron had lived with them for much of his life, had done well under their care, and stated that he wished to be adopted by them. Aaron’s two siblings also wished to be adopted by the

grandparents and, by the time of the hearing on the section 388 petition, adoption had nearly been finalized for all three children.

In comparison, Aaron's relationship with Manuel was not close. When Manuel first appeared in the case, Aaron stated that he had no recollection of him. Aaron became scared when Manuel showed up at the grandparents' house. Furthermore, Aaron's therapist noted how Aaron's encounter with Manuel left him feeling discomfort and confusion, and determined that Aaron would benefit from having no contact with Manuel. Based on this evidence, it was not error for the court to find that Manuel could not show that granting the section 388 petition would be in Aaron's best interest.

Manuel's reliance on *In re Julia U.* (1998) 64 Cal.App.4th 532 is not compelling. In that case, Division Six of this Court found that a father's parental rights were denied without due process because the trial court improperly refused him reunification services. (*Id.* at p. 540.) The facts in *In re Julia U.* are readily distinguishable from those here, however. As soon as the appellant in *In re Julia U.* discovered that he might be the father of the child, he expressed a commitment to raising the child. He voluntarily expressed this desire when the child was well less than a year old. (*Id.* at pp. 536-537.)

In contrast, even if the letters accompanying Manuel's second section 388 petition were given full credence, they would establish nothing more than a fleeting relationship between Manuel and Aaron. Manuel's presence in the first seven years of Aaron's life was not significant. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.) Manuel failed to demonstrate that he had provided any substantial nurturing to Aaron. Aaron's maternal grandmother stated that even though Manuel knew where she lived, he failed to contact Aaron. On the other hand, Aaron had been provided with nurturing by his grandparents. It would not have been beneficial to force Aaron to develop a new parental relationship with someone who did not enter his life until he was seven years old, especially when his grandparents already provided that role.

Moreover, Manuel failed to show that his relationship with Aaron was that of a “presumed father,” the relief Manuel sought in his second section 388 petition. Manuel clearly did not meet any of the criteria of Family Code section 7611. A presumed father is one “who has lived with the child and treats the child as a son or daughter,” and “has developed a parent-child relationship that should not be lightly dissolved. This type of familial relationship is much more important, at least to the child, than a biological relationship of actual paternity.” (*In re P.A.* (2011) 198 Cal.App.4th 974, 980.)

Although there is an exception to the requirements of Family Code section 7611 for a father prevented from seeing the child by another’s interference (*In re M.C.* (2011) 195 Cal.App.4th 197, 212-213), the application of that exception depends on a consideration of the man’s “conduct before and after the child’s birth, including whether he publicly acknowledged paternity, paid pregnancy and birth expenses commensurate with his ability to do so, and promptly took legal action to obtain custody of the child. [Citation.] He must demonstrate a full commitment to his parental responsibilities within a short time after he learned that the biological mother was pregnant with his child. [Citation.] He must also demonstrate a willingness to assume full custody. [Citation.]” (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 583.) Manuel exhibited little commitment to Aaron until much too long after his birth. Accordingly, we find that the dependency court properly denied the section 388 petition.

DISPOSITION

The March 12, 2012 order denying Manuel’s section 388 petition is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.